SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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INDEX NO. 160764/2018

EUGENE STERNKOPF,

Plaintiff,

- v -

395 HUDSON NEW YORK, LLC,EMMIS COMMUNICATIONS CORPORATION,

Defendant.

MOTION DATE 03/28/2022, 03/28/2022, 03/28/2022, 03/28/2022

MOTION SEQ. NO. 006 007 008 009

DECISION + ORDER ON MOTION

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395 HUDSON NEW YORK, LLC

Plaintiff,

-against-

JAMES E. FITZGERALD INC., PAR FIRE PROTECTION, LLC, PAR PLUMBING CORP.,, EMMIS RADIO, LLC.

Defendant.

Third-Party
Index No. 595983/2019

----------X

JAMES E. FITZGERALD INC.

Plaintiff,

-against-

ARI PRODUCTS INC.

Defendant.

Second Third-Party
Index No. 595370/2020

----------X

EMMIS COMMUNICATIONS CORPORATION

Plaintiff,

-against-

JAMES E. FITZGERALD, INC., PAR FIRE PROTECTION, LLC, PAR PLUMBING CORP., ARI PRODUCTS, INC.

Defendant.

Third Third-Party
Index No. 595415/2020

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JAMES E. FITZGERALD INC.

Plaintiff,

-against-

FINDLAY INSTALLATION SERVICES, L.L.C. D/B/A FINDLAY INSTALLATION

Defendant.

Fourth Third-Party
Index No. 595490/2020

----------X

EMMIS COMMUNICATIONS CORPORATION

Plaintiff,

-against-

ARI PRODUCTS, INC.

Defendant.

Fifth Third-Party
Index No. 595578/2020

----------X

EMMIS COMMUNICATIONS CORPORATION

Plaintiff,

-against-

JAMES FITZGERALD, PAR FIRE PROTECTION LLC, PAR PLUMBING CORP., EMMIS RADIO LLC, ARI PRODUCTS INC., FINDLAY INSTALLATION SERVICES

Defendant.

Sixth Third-Party
Index No. 595579/2020

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ARI PRODUCTS, INC.

Plaintiff,

-against-

FINDLAY INSTALLATION SERVICES, LLC D/B/A FINDLAY INSTALLATION

Defendant.

Seventh Third-Party
Index No. 595612/2020

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242,

243, 244, 245, 246, 247, 248, 249, 314, 316, 322, 323, 324, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 385, 386, 387

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 325, 326, 327, 334, 335, 336, 337, 346, 347, 348, 349, 350, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 382, 383, 388, 399, 400

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 328, 329, 330, 338, 339, 340, 341, 380, 381, 391, 392, 393, 394, 395, 396, 397, 398

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 310, 311, 312, 313, 317, 318, 319, 320, 321, 331, 332, 333, 342, 343, 344, 345, 362, 363, 364, 365, 366, 367, 384, 389, 390

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Plaintiff EUGENE STERNKOPF ("Sternkopf") commenced the instant action for injuries allegedly sustained from a fall that was allegedly caused by a hazardous condition on the floor during the course of his employment. Defendants move for summary judgment to dismiss plaintiff's Labor Law claims and various cross and counter claims against them. The court will address each motion and claim in turn.

Background

Plaintiff seeks damages for injuries sustained after he allegedly tripped on discarded carpet scraps that were on the floor of the construction site he was working on. Plaintiff alleges that defendants 395 HUDSON NEW YORK, LLC ("Hudson") and EMMIS COMMUNICATIONS CORPORATION ("Emmis") had constructive notice of the hazardous situation and a duty of care towards him. Plaintiff's employer, PAR Fire Protection, LLC ("PFP"), was hired by JAMES E. FITZGERALD INC ("JEF"). More specifically, JEF was the general contractor of a renovation project for Emmis CC, which occupied the premises as a tenant of Hudson. EMMIS RADIO, LLC ("Emmis R") is a subsidiary of Emmis subleasing some of the space occupied on the same

premises, and PAR PLUMBING CORP. ("PPC") is a subsidiary of PFP. The court will refer to PFP and PPC collectively as "The Par Companies" or "TPC". FINDLAY INSTALLATION SERVICES ("FIS") is a subcontractor for ARI PRODUCTS INC. ("ARI") in charge of the installation of the carpets procured by ARI for JEF, of which the scraps allegedly caused plaintiff to trip and injure himself.

Discussion

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University Medical Center*, 64 NY 2d 851 [1985]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

Motion Seq. 008

Defendant JEF moves for summary judgment to dismiss the claims under Labor Law §240(1), §241(6), and §200(1). Defendant argues that the accident was not the result of an elevation-related or gravity-related risk, that it did not exercise supervision or control on the plaintiff or receive notice of the dangerous condition, and that there was no Industrial Code violation. Defendant JEF also moves for contractual indemnity from ARI and The Par Companies alleging that the accident arises out of work that they were contracted to perform. Defendant JEF

further moves for the dismissal of the third-party complaint and the third third-party complaint against it. The Court will discuss each claim in turn.

Labor Law §240(1)

Labor Law §240(1) states in pertinent part as follows: "All contractors and owners and their agents … in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed." The statute imposes absolute liability upon owners, contractors and their agents where a breach of the statutory duty proximately causes an injury. *Gordon v. Eastern Railway Supply, Inc*., 82 NY2d 555, 559 [1993]; *Ross v. Curtis–Palmer Hydro–Elec. Co.,* 81 NY2d 494, 500 [1993]; *Rocovich v. Consolidated Edison Co*., 78 NY2d 509, 513 [1991]. Further, The Court of Appeals of New York held in *Narducci v. Manhasset Bay Assocs.,* 96 N.Y.2d 259, 750 N.E.2d 1085 (2001) that "Workplace accidents which stem from "gravity-related" occurrences stemming from improperly hoisted or inadequately secured objects, but which involve only a *de minimis elevation* differential, may be distinguished from accidents within scope of Scaffold Law, on basis that such occurrences do not fit within Legislature's intended application of statute".

Here, there is no dispute that Plaintiff alleges to have slipped and fallen on discarded carpet scraps, rather than falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured (*See* NYSCEF Doc. 282 at pp. 70 and 72-73). Further, there is no opposition from the plaintiff with regard to this particular issue liability. Accordingly, JEF is

entitled to Summary Judgment to dismiss plaintiff's Labor Law §240(1) claim, which is dismissed with regards to all defendants.

Labor Law §241(6)

Labor Law § 241(6) places a nondelegable duty upon owners and general contractors, and their agents to comply with the specific safety rules set forth in the Industrial Code (*Ross at 501-502)*. Accordingly, to support a cause of action under Labor Law § 241(6), a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code provision that is applicable given the circumstances of the accident and sets forth a concrete standard of conduct rather than a mere reiteration of common-law principals (*id. at 502; Ares v State,* 80 NY2d 959, 960, 590 NYS2d 874 [1992]; see also *Adams v Glass Fab,* 212 AD2d 972, 973 [4th Dept 1995]). Plaintiff's claim under §241(6) is based on a violation of the Industrial Code Section 12 NYCRR § 23-1.7(d), which reads in relevant part:

> "[e]mployers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing."

In *Rodriguez v. Dormitory Auth. of State*, 104 A.D.3d 529, 530, 962 N.Y.S.2d 102, 105 (2013), the First Department held, in a similar case involving a worker who fell because of scaffolding clamps, that as the accident was not caused by a foreign substance within the meaning of the Industrial Code Section 12 NYCRR § 23-1.7(d). However, the First Department also held in *Pereira v. New Sch.*, 148 A.D.3d 410, 412, 48 N.Y.S.3d 391, 393 (2017), that a worker slipping on excess wet concrete discarded on plywood, that when the substance is not integral to the work being performed by plaintiff at the accident site, it can be considered as a foreign substance within the meaning of § 23-1.7(d) of Industrial Code Section 12 NYCRR.

Here, plaintiff's alleged fall was caused by tripping on discarded carpet scraps. Similarly to *Pereira*, this court does find that the discarded carpet scraps constituted foreign substances within the meaning of Industrial Code Section 12 NYCRR § 23-1.7(d), and that there was therefore a violation of the statute in the present case. Accordingly, JEF is not entitled to Summary Judgment to dismiss the Labor Law §241(6) claim.

Labor Law §200 and common law negligence claims

"Labor Law § 200 is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work" (*Edwards v State Univ. Constr. Fund,* 196 AD3d 778, 780 [2021] [internal quotation marks and citations omitted]; *see Wiley v Marjam Supply Co., Inc*., 166 AD3d 1106, 1109 [2018], lv denied 33 NY3d 908 [2019]). Liability under Labor Law § 200 "generally falls into two broad categories: instances involving the manner in which the work is performed, and instances in which workers are injured as a result of dangerous or defective premises conditions at a work site" *Abelleira v City of New York,* 120 AD3d 1163, 1164 [2nd Dept 2014]; see *Cantalupo v Arco Plumbing & Heating, Inc.,* 194 AD3d at 689 [2nd Dept 2021]. Those two broad categories of actions are where a worker's injuries arise as a result of dangerous or defective premises conditions at a work site, and those involving injuries arising from the method and the manner in which the work is performed (*see Modugno v Bovis Lend Lease Interiors, Inc.,* 184 AD3d 820, 822 [2nd Dept 2020]). Further, in *Mitchell v. New York University*, 12 A.D.3d 200, 201, 784 N.Y.S.2d 104 (1st Dep't. 2004), The First Department held, citing *Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 501 N.Y.S.2d 646 (1986), that "the proponent of a Labor Law § 200 claim must demonstrate that the defendant had actual or constructive notice of the allegedly unsafe condition that caused the

accident. The notice must call attention to the specific defect or hazardous condition and its specific location, sufficient for corrective action to be taken."

Here, plaintiff argues that JEF was on notice of the dangerous condition posed by the various debris on the floor, including discarded carpet scraps. JEF counterargue that plaintiff's allegations are not specific enough under *Mitchell* for it to take corrective action. Further, in a deposition testimony on behalf of Emmis (See NYSCEF doc. 259 at pg. 139 and Doc. 260 at pg. 69), Alex Roman stated that JEF had laborers on site tasked with cleaning debris and other materials under the direction of JEF's labor foreman, including debris generated by the subcontractors. Although plaintiff's allegations of JEF's notice of the potentially dangerous conditions are not specific to the *exact* place where the accident happened, this Court finds that the allegation are specific enough to put JEF on notice and for corrective action to be taken, and that JEF indeed sought to take corrective action by discarding excess carpet scraps but did so imperfectly. Plaintiff further argues that JEF controlled the means and methods of Par Fire's work, as the general contractor for the project. JEF denies having exercised supervisory control over the injury-producing work by claiming that the carpet installation performed by FIS. This court will not address this issue of direction and control as it finds that plaintiff's injury arose as a result of dangerous or defective premises conditions at a work site, which has been sufficiently proven, thereby satisfying *Modugno*'s first category. Accordingly, JEF's motion for summary judgement to dismiss the Labor Law §200 and common law negligence claims are denied.

Contractual Indemnification from ARI and The Par Companies

JEF moves for contractual indemnification from ARI, The Par Companies, and FIS, alleging that it entered into identical General Services Contracts with Par Plumbing, Par Fire, and

ARI (See NYSCEF Docs. 300, 303, and 304) for all construction services between the two entities, which state in their fourth Article:

> "To the fullest extent permitted by law, the Subcontractor agrees to indemnify, defend and hold harmless the Contractor and owner … from any and all claims, suits, damages, liabilities, professional fees, including attorney's fees, costs, court costs, expenses and disbursements related to death, personal injury … arising out of or in connection with or as a consequence of the performance of the Work of the Subcontractor under this agreement (contract), as well as any additional work, extra work, or add-on work, whether caused in whole or part by the Subcontractor including any subcontractors therefore and their employees."

In *Keena v. Gucci Shops, Inc.,* 300 A.D.2d 82, 751 N.Y.S.2d 188 (2002), the First Department held that "Construction site owner was entitled to contractual indemnification against subcontractor, in worker's action under safe workplace laws, even absent proof that subcontractor had been negligent, where worker's injury occurred when plank upon which he was walking, supplied by subcontractor as part of its contractual undertaking to provide worksite protection, gave way, and subcontractor had agreed in subcontract to indemnify owner for "all claims arising in whole or in part and in any manner" from its "acts, omissions, breach or default" in connection with "any work" it performed pursuant to subcontract."

Here, ARI was a subcontractor for JEF tasked with the flooring of the project. ARI later assigned the installation of the flooring to FIS (*See* NYSCEF Doc. 378). At the time of the accident, Plaintiff was an employee of both Par Fire and Par Plumbing and was performing sprinkler services at the construction site. However, the documents show that PPC did not have a contractual relationship with JEF with regards to the project that plaintiff was working on. Accordingly, plaintiff's personal injury arose in connection with both of PFP and ARI's work.

ARI and PFP, having agreed to a contractual indemnification clause with JEF, and such clause being valid and covering within its scope the situation at hand, it is this Court's opinion that only ARI and PFP are contractually liable to JEF for plaintiff's accident.

Third-party complaints

JEF moves to dismiss Hudson and Emmis' third-party complaints against it, alleging lack of negligence on its part with regards to the accident. For the reasons stated in the analysis of the issues of liability above, this motion is denied.

Remaining crossclaims and counterclaims alleged by The Par Companies, ARI, and FIS

JEF moves to dismiss crossclaims and counterclaims made against it by The Par Companies, ARI, and FIS, alleging lack of negligence on its part with regards to the accident. For the reasons stated in our analysis of the issues of liability, this motion is denied.

Motion Seq. 006

Third-party complaints

The Par Companies move for Summary judgment to dismiss third-party complaints and cross-claims brought against it, alleging lack of factual disputes. For the reasons stated above (*See* Motion Seq. 008), this motion is granted with regards to PPC only.

Contractual indemnification

Third-part defendants and third third-party defendants The Par Companies move for summary judgment to dismiss JEF's contractual indemnification complaint, alleging lack of factual or legal issues. For the reasons stated in our analysis of JEF's contractual indemnification claim from ARI and The Par Companies (*See* Motion Seq. 008), this motion is granted only with regards to PPC.

Common law indemnification and contribution

The Par Companies move for Summary judgment to dismiss claims for common-law contribution and common-law indemnification, brought by JEF. In support, TPC states that Workers' Compensation Law § 11 bars actions for contribution or indemnification against an employer unless there is evidence of a grave injury. TPC argues that there is neither a grave injury nor a contractual provision. This argument is unopposed by JEF. TPC are therefore entitled to summary judgment for the dismissal of all common law indemnification and contribution claims brought by JEF against it.

Breach of contract for failure to procure insurance

The Par Companies move for Summary judgment to dismiss JEF, Hudson and Emmis' crossclaims for Breach of contract for failure to procure insurance, alleging that PFP satisfied the requirement by procuring insurance and that JEF is not automatically entitled to coverage as the claim did not arise from work under their contract. JEF counterargues that the insurance procured by PFP does not definitely agree to indemnify JEF, and that it should be permitted to maintain its breach of contract claim against PFP.

In *Ceron v. Rector, Church Wardens & Vestry Members of Trinity Church*, 224 A.D.2d 475, 638 N.Y.S.2d 476 (2d Dep't 1996), the Second Department held that, if a claim does not arise from the work under the contract, the obligation to provide insurance is not triggered.

Here, it appears that PFP did procure insurance as per the contract (*See* NYSCEF Doc. 243), and that said contract does name JEF as an additional insured (*See* NYSCEF Doc. 244). There cannot be a breach of contract for failure to procure insurance if insurance was procured. The fact that there is no conclusive agreement to indemnify JEF in the present case does not by itself constitute a breach. Accordingly, TPC's motion is granted.

Plaintiff's cross-motion for Summary judgment under Labor Law 241(6)

Plaintiff moves to dismiss TPC's motion for summary judgment in its entirety and cross-moves for summary judgment under Labor Law 241(6) against Hudson and Emmis, alleging that the discarded carpet scraps constitute an Industrial Code violation. For the reasons set above (*See* motion Seq. 006 and 008), plaintiff's motion is denied in its entirety.

Motion Seq. 007

Third-Party Defendant FINDLAY INSTALLATION SERVICES, LLC ("FIS") moves for summary judgment dismissing the third-party actions asserted against it by JEF in the Fourth Third-Party Complaint, by ARI in the Seventh Third-Party Complaint, and by Hudson and Emmis in the Sixth Third-Party Complaint, alleging that these third-party plaintiffs are not entitled to indemnification or contribution from FIS. As stated above, FIS was a subcontractor for JEF in charge of the installation of the carpets. The court will address each claim in turn.

Contractual indemnification

In the Fourth third-party complaint, JEF seeks contractual indemnification from FIS in connection with the accident. In the Sixth third-party complaint, ARI, Emmis, and Hudson seek contractual indemnification from FIS in connection with the accident. In response, FIS asserts that it has no contractual privity with JEF and Emmis, and never intended to indemnify them. FIS further asserts that all of JEF, ARI, Emmis, and Hudson are negligent parties that cannot enforce a contractual indemnification provision in any event.

A party is entitled to full contractual indemnification for damages incurred in a personal injury suit, provided that the intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances. *Masciotta v. Morse Diesel Int'l, Inc.*, 303 A.D.2d 309, 758 N.Y.S.2d 286 (2003). Statute prohibiting indemnification contracts purporting to indemnify promisee against own negligence allows a partially negligent

general contractor to seek contractual indemnification from its subcontractor, so long as the indemnification provision does not purport to indemnify the general contractor for its own negligence. *Brooks v. Judlau Contracting, Inc.,* 11 N.Y.3d 204, 898 N.E.2d 549 (2008). Further, the General Obligations Law § 5-322.1 provides:

> "A covenant, promise, agreement or understanding in, or in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenances and appliances including moving, demolition and excavating connective therewith, purporting to indemnify or hold harmless the promisee against liability for damages arising out of bodily injury to persons or damage to property contributed to, caused by or resulting from the negligence of the promisee, his agents or employees, or indemnitee, whether such negligence be in whole or in part, is against public policy and is void and unenforceable."

Here, FIS was retained by ARI under a contract to install the flooring in Emmis' office space. The contract contained the following indemnification provision:

> Indemnity—To the fullest extent permitted by law. Subcontractor shall defend, indemnify and hold harmless **Contractor**, Contractor's other subcontractors, Architect/Engineer, **Owner and their agents**, consultants, employees and others as required by this Agreement from all claims for bodily injury and property damage that may arise from performance of Subcontract Work **to the extent of the negligence attributed to such acts or omissions by Subcontractor**, Subcontractor's subcontractors or anyone employed directly by any of them or by anyone for whose acts any of them may be liable. (emphasis added)

However, FIS contends that JEF was negligent in the coordination of the trades, and that this negligence contributed to the accident and bars FIS from any contractual claim from JEF. FIS also alleges that it had put ARI on notice about JEF's alleged poor coordination of the trades and that ARI allegedly did not relay those concerns to the general contractor. As it has been held earlier (*See* Motion seq. 008), JEF may be found liable to plaintiff under Labor Law. Further, Hudson, as

owner of the building; Emmis, as occupant of the premises; and ARI, as contractor, are all mentioned in the indemnification provision in the ARI-FIS contract. None of those parties have been alleged any negligence in connection with this accident. The Court does not find this provision to be against public policy, as it pertains to the extent of the negligence of subcontractor – if any – and that FIS' alleged negligence is a clear question of fact that is best left to a finder of facts. Accordingly, FIS' motion to dismiss JEF's Fourth third-party complaint is granted with regards to contractual indemnification, and FIS' motion to dismiss ARI, Emmis, and Hudson's Sixth third-party complaint is denied with regards to contractual indemnification.

Common-law indemnification

FIS moves to dismiss the common-law indemnification claims from JEF, ARI, Emmis, and Hudson, alleging that JEF is barred from recovery because of its active negligence, and that ARI, Emmis, and Hudson are barred from recovery because they have not delegated exclusive responsibility to FIS.

In the classic case, implied indemnity permits one held vicariously liable solely on account of the negligence of another to shift the entire burden of the loss to the actual wrongdoer. *17 Vista Fee Assocs. v. Tchrs. Ins. & Annuity Ass'n of Am.*, 259 A.D.2d 75, 693 N.Y.S.2d 554 (1999). Party that has itself actually participated to some degree in the wrongdoing cannot receive the benefit of the doctrine of implied indemnification. *Id.* To be entitled to implied indemnification, the owner or contractor seeking indemnity must have delegated exclusive responsibility for the duties giving rise to the loss to the party from whom indemnification is sought. *Id.*

For the reasons set forth above in the contractual indemnification analysis of this present motion, only JEF may be found to have been actively negligent with regards to the accident. However, it does appear from the papers that neither of Emmis nor Hudson have delegated

exclusive responsibility to FIS with regards to the duties giving rise to the accident, as FIS was but one of many contractors at the location. ARI, on the other hand, did delegate exclusive responsibility of installing its carpet on the premises to FIS.

Accordingly, FIS' motion to dismiss JEF's Fourth third-party complaint is granted with regards to common-law indemnification, and FIS' motion to dismiss ARI, Emmis, and Hudson's Sixth third-party complaint is granted with regards to common-law indemnification for ARI only.

Contribution

FIS moves to dismiss the contribution claims from JEF, ARI, Emmis, and Hudson, alleging that the injury was not a cause for plaintiff's injury. As held above, the court respectfully disagrees with that argument. Accordingly, FIS' motion to dismiss the contribution claims is denied.

ARI's Cross-motion (Seq. 007)

For the reasons stated above (*See* Motion Seq. 007), the cross-motion by ARI for indemnification and contribution from Findlay is granted with regards to contractual indemnification and contribution only; and, for the reasons stated above (*See* Motion Seq. 008), ARI's cross-motion to dismiss JEF's indemnification claims is denied.

Plaintiff's cross-motion (Seq. 009)

Plaintiff cross-moves for Summary judgment on the issue of liability under Labor Law §241(6), which defendants Hudson, Emmis, and Emmis Radio oppose as untimely and unfounded. The court excuses the untimeliness of plaintiff's cross-motion and, for the reasons stated above (*See* Motion Seq. 008), grants plaintiff's motion.

Motion Seq. 009

Hudson, Emmis, and Emmis Radio move for Summary judgment to dismiss plaintiff's complaint and crossclaims asserted against them. The court will address each issue in turn.

Contractual indemnification, Common-law indemnification, and contribution

For the reasons stated above (*See* Motion Seq. 007), the motion by Hudson, Emmis, and Emmis Radio for contractual indemnification, common-law indemnification, and contribution from FIS is granted; and the motion for breach of contract from The Par Companies is denied.

Plaintiff's Labor Law claims

For the reasons stated above (*See* Motion Seq. 008), the motion by Hudson, Emmis, and Emmis Radio to dismiss Labor Law claim is granted with regards to Labor Law §240(1) and denied with regards to Labor Law §241(6). The court will, however, consider the issues of Labor Law liability under Labor Law §200 and common law negligence separately for Hudson, Emmis, and Emmis Radio.

When injury to worker arises, not from methods or manner of work, but from dangerous premises condition, property owner is liable under safe workplace statute when owner created the dangerous condition causing injury, or when owner failed to remedy dangerous or defective condition of which it had actual or constructive notice. *Mendoza v. Highpoint Assocs., IX, LLC,* 83 A.D.3d 1, 919 N.Y.S.2d 129 (2011). The duty to provide a safe place to work encompasses the duty to make reasonable inspections to detect unsafe conditions; whether the danger should have been apparent upon visual inspection is a question of fact bearing on defendant's liability. *Urb. v. No. 5 Times Square Dev., LLC*, 62 A.D.3d 553, 879 N.Y.S.2d 122 (2009).

Here, the accident arose out of alleged dangerous conditions of the workplace, not from the means and methods of the work, meaning that plaintiff must not prove supervision and control, but rather notice. It does not appear from the papers that either of Hudson, Emmis, or Emmis Radio had any actual or constructive notice of the dangerous condition posed by the carpet scraps. However, it does not appear either that Hudson, Emmis, and Emmis Radio conducted reasonable

inspections of the workplace to detect unsafe conditions. Accordingly, the motion by Hudson, Emmis, and Emmis Radio to dismiss Labor Law §200 and common law negligence claims against them is denied.

Accordingly, it is hereby

ORDERED and ADJUDGED that PAR FIRE PROTECTION LLC and PAR PLUMBING CORP's motion for summary judgement to dismiss JAMES E. FITZGERALD, INC.'s motion for summary judgement on common-law indemnification, contribution, and breach of contract is granted in its entirety (Motion Seq. 006); and it is further

ORDERED and ADJUDGED that FINDLAY INSTALLATION SERVICES, L.L.C.'s motion to dismiss JAMES E. FITZGERALD INC., ARI PRODUCTS INC., 395 HUDSON NEW YORK, LLC and EMMIS COMMUNICATIONS CORPORATION's Contractual indemnity claims is granted with regards to JAMES E. FITZGERALD INC only (Motion Seq. 007); and it is further

ORDERED and ADJUDGED that FINDLAY INSTALLATION SERVICES, L.L.C.'s motion for summary judgement to dismiss JAMES E. FITZGERALD INC., ARI PRODUCTS INC., 395 HUDSON NEW YORK, LLC and EMMIS COMMUNICATIONS CORPORATION's Common-law indemnity claims is granted with regards to JAMES E. FITZGERALD INC and ARI PRODUCTS INC only (Motion Seq. 007); and it is further

ORDERED and ADJUDGED that FINDLAY INSTALLATION SERVICES, L.L.C.'s motion for summary judgement to dismiss JAMES E. FITZGERALD INC., ARI PRODUCTS INC., 395 HUDSON NEW YORK, LLC and EMMIS COMMUNICATIONS CORPORATION's contribution claims is denied in its entirety (Motion Seq. 007); and it is further

ORDERED and ADJUDGED that ARI PRODUCTS INC's cross-motion (Motion Seq. 007) for summary judgment is granted with regards to defendant FINDLAY INSTALLATION SERVICES, L.L.C. only, and on contractual indemnification and contribution claims only; and it is further

ORDERED and ADJUDGED that JAMES E. FITZGERALD, INC.'s motion for summary judgement to dismiss Plaintiff EUGENE STERNKOPF's Labor Law claims is granted with regards to section 240(1) only (Motion Seq. 008); and it is further

ORDERED and ADJUDGED that JAMES E. FITZGERALD, INC.'s motion for summary judgement on contractual indemnification is granted with regards to PAR FIRE PROTECTION LLC and ARI PRODUCTS, INC. only (Motion Seq. 008); and it is further

ORDERED and ADJUDGED that 395 HUDSON NEW YORK, LLC and EMMIS COMMUNICATIONS CORPORATION's motion for summary judgement to dismiss Plaintiff EUGENE STERNKOPF's Labor Law claims is granted with regards to section 240(1) only (Motion Seq. 009); and it is further

ORDERED and ADJUDGED that Plaintiff EUGENE STERNKOPF's cross-motion for summary judgement on the Labor Law 241(6) claim is granted (Motion Seq. 009); and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsels for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (access*ible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

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11/2/2022
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE